

**Before the
Federal Communications Commission
Washington, DC 20554**

**FILED/ACCEPTED
OCT 10 2007
Federal Communications Commission
Office of the Secretary**

In the Matter of)	EB Docket No. 07-197
)	
Kurtis J. Kintzel, Keanan Kintzel, and all)	File No. EB-06-IH-5037
Entities by which they do business before)	
the Federal Communications Commission)	FRN: 0007179054
)	
Resellers of Telecommunications Services.)	NAL/Acct. No. 200732080029

**PETITION TO INTERVENE AS A PARTY
OF THE
NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES**

The National Association of State Utility Consumer Advocates ("NASUCA"), pursuant to 47 C.F.R. § 1.223(b), petitions the Federal Communications Commission ("FCC" or "Commission") for leave to participate as a party in the hearing in this proceeding. This proceeding involves the enforcement of the law and Commission regulations against Kurtis J. Kintzel, Keanan Kintzel, and their telecommunications businesses, including Buzz Telecom Corporation ("Buzz"). As demonstrated below and in the attached Affidavit, NASUCA has a strong interest in this proceeding, in order to protect the interests of the telephone consumers that NASUCA members represent.¹ NASUCA's participation, by including the perspective of consumers who have been harmed by Buzz, will significantly assist the Commission in the determination of the issues in question here.²

This petition should be granted.

¹ 47 C.F.R. § 1.223(b).

² Id.

No. of Copies rec'd. 0720
List ABCDE

I. DESCRIPTION OF NASUCA

NASUCA is a voluntary national association of more than forty consumer advocates in 41 states and the District of Columbia, organized in 1979. NASUCA's members are designated by the laws of their respective states to represent the interests of utility consumers before state and federal regulators and in the courts.³ Members operate independently from state utility commissions, as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (*e.g.*, the state Attorney General's office). Associate and affiliate NASUCA members also serve utility consumers, but have not been created by state law or do not have statewide authority.

NASUCA has participated in a wide range of Commission proceedings, including recently filing comments in the Qwest Petition for Forbearance in four metropolitan areas,⁴ AT&T's Petition for Forbearance on ARMIS reporting,⁵ refreshing the record on Lifeline,⁶ and refreshing the record on special access.⁷ Protection of consumers in these regulatory proceedings is key to NASUCA's mission (and that of its members); also key to those missions is the protection of consumers from entities who continually flout the law and regulations designed to protect consumers. That is the focus of the instant proceeding.

³ See, *e.g.*, Ohio Rev. Code Chapter 4911; 71 Pa. Cons. Stat. Ann. § 309-4(a); Md. Pub. Util. Code Ann. § 2-205(b); Minn. Stat. Ann. Subdiv. 6; D.C. Code Ann. § 34-804(d).

⁴ WC Docket No. 07-97, NASUCA comments filed August 31, 2007, reply comments filed October 1, 2007.

⁵ WC Docket No. 07-139, NASUCA comments filed August 20, 2007, reply comments filed September 19, 2007.

⁶ WC Docket No. 03-109, NASUCA comments filed August 24, 2007, reply comments filed September 10, 2007.

⁷ WC Docket No. 05-25, NASUCA comments, August 8, 2007, reply comments August 15, 2007.

II. HISTORY OF THIS PROCEEDING

On September 10, 2007, the Commission released its Order to Show Cause and Notice of Opportunity for Hearing (“*Show Cause Order*”) in this proceeding.⁸ The *Show Cause Order*:

commence[d] an evidentiary hearing before an administrative law judge to determine, among other things, whether the authority granted to Kurtis J. Kintzel, Keanan Kintzel, and any and all entities in which they are principals and/or do business, to operate as common carriers, pursuant to Section 214 of the Communications Act of 1934, as amended, should be revoked and, further, whether Kurtis J. Kintzel, Keanan Kintzel, and any and all entities in which they are or may be principals and/or by which they do, or may do business, should be required to refrain from providing any interstate common carrier services in the future without first obtaining prior Commission consent. ... [E]ntities providing interstate common carrier services owned and controlled by the Kintzel brothers apparently willfully and repeatedly violated multiple terms of a Consent Decree to which they were signatories and apparently willfully and repeatedly violated multiple Commission rules and provisions of the Act relating to the provision of interstate common carrier services. Such apparent violations, and a lengthy history of noncompliance before the Commission, raise material and substantial questions regarding the basic qualifications of the Kintzel brothers to engage in the provision of interstate common carrier services now and in the future.⁹

The Consent Decree referred to:

specifically applied to all entities owned, directed, or controlled by the Kintzel brothers, and was intended to ensure their future compliance with Sections 214, 254, and 258 of the Act and related Commission rules. The Consent Decree contemplated a voluntary

⁸ FCC 07-165. The notice of this order was published in the Federal Register on September 27, 2007 (Vol. 72, No. 187, at 54911), making the instant Petition timely under 47 C.F.R. § 1.223.

⁹ *Show Cause Order*, ¶ 1 (footnote omitted). As the *Show Cause Order* states, “According to Commission records, Kurtis J. Kintzel and his brother, Keanan Kintzel, are or have been principals in entities doing business before the Commission as Business Options, Inc., Buzz Telecom Corporation, Link Technologies, AVATAR, and US Bell Corporation. For the purposes of this *Order to Show Cause and Notice of Opportunity for Hearing*, Kurtis J. Kintzel and Keanan Kintzel will be referred to as the “Kintzel brothers.” Such reference includes any and all entities in which they are principals, that they control and/or by which they do business.” *Id.*, n.1.

contribution to the United States Treasury in the total amount of \$510,000 to be paid in 48 scheduled monthly installments; payment of all outstanding universal service and TRS debts; and timely payment of all future universal service and TRS assessments. In addition, the Kintzel brothers agreed to henceforth obtain all appropriate and necessary authorizations prior to discontinuing service in any state and to implement procedures regarding marketing of services to new customers and verification procedures related to these marketing efforts. The Consent Decree also required the filing of regular reports with the Commission relating to compliance with various Commission rules and Consent Decree requirements.¹⁰

The Consent Decree was approved on February 20, 2004.¹¹

On September 12, 2007, the Chief Administrative Law Judge issued an Order that, *inter alia*, set a prehearing conference for October 11, 2007 at the Commission's offices.¹² One purpose of the prehearing conference is to set a hearing date.¹³

The Commission's ECFS system shows that on September 29, 2007, Keanan J. Kintzel, one of the named persons and a principal in Buzz, filed a "Notice of Appearance and Request for Service of Notices and Documents." The *Show Cause Order* had directed that in order:

to avail themselves of the opportunity to be heard, Buzz Telecom Corporation, Business Options, Inc., US Bell Corporation, Link Technologies, AVATAR, and/or their principals Kurtis J. Kintzel and/or Keanan Kintzel, shall file with the Commission within 20 calendar days of the mailing of this *Order to Show Cause and Notice of Opportunity for Hearing* a written appearance stating that they will, individually and/or by legal representative, appear on the date fixed for hearing and present evidence on the issues specified herein.¹⁴

¹⁰ *Show Cause Order*, ¶ 5 (footnotes omitted).

¹¹ *See Approving Order*, 19 FCC Rcd 2916 (2004).

¹² FCC 07M-32.

¹³ *Id.*

¹⁴ *Show Cause Order*, ¶ 25.

Keanan J. Kintzel's notice was submitted "on behalf of myself individually." Depending on the mailing date of the *Show Cause Order* (which is not apparent), the 20 calendar days may have elapsed. Unless some document not appearing on the ECFS has been filed, in the absence of good cause shown, Buzz Telecom Corporation, Business Options, Inc., US Bell Corporation, Link Technologies, AVATAR, and Kurtis J. Kintzel have waived their right to a hearing.¹⁵

III. NASUCA'S INTEREST IN THIS PROCEEDING.

The Show Cause Order provides a long list of violations of the consent order and Commission rules alleged to have been committed by Buzz and the Kintzel brothers. They include discontinuing service to customers without Commission or state regulatory authorization¹⁶; making federal universal service and TRS contributions¹⁷; and failing to make the voluntary contributions to the Commission agreed to in the Consent Decree.¹⁸

The Show Cause Order also sets out other violations, including failing to respond to Commission inquiries;¹⁹ failure to provide verification of customer carrier changes, and, in fact, changing customers' carrier selections without the customer's consent..²⁰ (It appears that the latter acts would also constitute violations of the consent order.)

NASUCA members have a wealth of experience with similar actions by Buzz and its principals on the state level. For example, the Public Utilities Commission of Ohio ("PUCO") recently found Buzz to have engaged in deceptive sales practices, to have

¹⁵ Id., ¶ 27.

¹⁶ Id., ¶ 11.

¹⁷ Id., ¶ 12, 13.

¹⁸ Id., ¶ 14.

¹⁹ Id., ¶ 15.

²⁰ Id., ¶ 17.

slammed consumers, to have abandoned service without PUCO authority, and to have violated other specific PUCO orders.²¹ NASUCA member the Office of the Ohio Consumers' Counsel was an active participant in that proceeding.

Formal proceedings against Buzz concerning essentially similar violations have taken place in Alabama, Florida, Georgia, Indiana, Iowa, Kansas, Maine, Minnesota, Mississippi, Missouri, Montana, North Carolina, Pennsylvania, West Virginia and Wyoming. Buzz and its operations have also been investigated in Arkansas, Delaware and Kentucky. NASUCA members in Georgia, Iowa, Kentucky, and Minnesota have been actively involved in their states' proceedings.

NASUCA and its members seek to protect customers from the direct impacts of slamming and deceptive practices. NASUCA and its members also have an interest in seeing that companies under the FCC's and state commission's jurisdictions comply with other regulatory practices that support the public interest.

IV. NASUCA'S INTERVENTION SHOULD BE GRANTED.

The Commission's rule for intervention in hearing proceedings, 47 C.F.R. § 1.223, requires a party seeking intervention to set forth its interest in the proceeding and show the Commission how its participation will assist the Commission in the determination of the issues in question. The description of NASUCA above and its members' participation in state proceedings concerning Buzz definitively show NASUCA's interest in protecting consumers from the likes of Buzz. And NASUCA and its members' experience in state-level proceedings also shows clearly that NASUCA's

²¹ *In the Matter of the Commission Staff's Investigation into the Alleged Violations of the Minimum Telephone Service Standards by Buzz Telecom Corporation*, PUCO Case No. 06-1443-TP-UNC, Opinion and Order (October 3, 2007), see <http://dis.puc.state.oh.us/ViewImage.aspx?CMID=A1001001A07J04B02449F48462>.

participation here will assist the Commission.

V. ADDITIONAL ISSUES FOR COMMISSION CONSIDERATION

The Commission's rules also direct that parties seeking intervention identify any issues proposed to be considered in addition to those already identified in the Commission's orders. In this proceeding, the Commission has identified 11 issue areas for consideration.²² NASUCA expects to be involved in those issues.

But NASUCA respectfully submits that there two additional issues that should be examined here: First, there is the role that Buzz's underlying carrier played in the transactions that led Buzz to abandon its operations.²³ And second, there is the extent to which the Commission's carrier change verification rules have made it more difficult to obtain relief for consumers from Buzz's actions.²⁴

VI. CONCLUSION

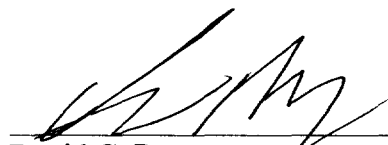
For the reasons set forth herein, NASUCA's Petition to Intervene as a party to this proceeding should be granted. Further, the additional issues identified by NASUCA should be incorporated in this proceeding.

²² *Show Cause Order*, ¶

²³ Based on information and belief, the underlying carrier was Qwest Communications International, Inc.

²⁴ The Commission's rules are silent on the burden placed upon a party suggesting additional issues. NASUCA will supplement and support these requests if directed to do so.

Respectfully submitted,



David C. Bergmann
Assistant Consumers' Counsel
Chair, NASUCA Telecommunications
Committee
bergmann@occ.state.oh.us

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, OH 43215-3485
Phone (614) 466-8574
Fax (614) 466-9475

Kathleen F. O'Reilly
Attorney at Law
414 "A" Street, SE
Washington, D.C. 20003
Counsel to NASUCA

NASUCA
8380 Colesville Road, Suite 101
Silver Spring, MD 20910
Phone (301) 589-6313
Fax (301) 589-6380

October 9, 2007

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	EB Docket No. 07-197
)	
Kurtis J. Kintzel, Keanan Kintzel, and all)	File No. EB-06-IH-5037
Entities by which they do business before)	
the Federal Communications Commission)	FRN: 0007179054
)	
Resellers of Telecommunications Services.)	NAL/Acct. No. 200732080029

AFFIDAVIT OF DAVID C. BERGMANN

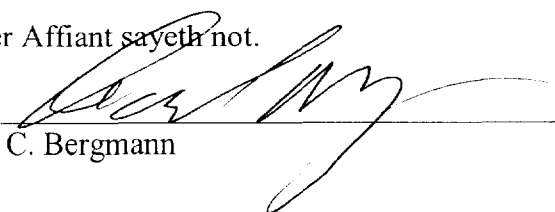
STATE OF OHIO

COUNTY OF FRANKLIN

The undersigned, being of lawful age and duly sworn on oath, hereby certifies, deposes and states the following:

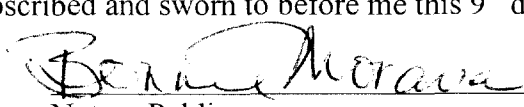
1. I understand that this Affidavit will be submitted to the Federal Communications Commission in support of the Petition of the National Association of State Utility Consumer Advocates ("NASUCA") to intervene as a party in the above-captioned proceeding.
2. I have fully read the Petition, to which this affidavit is appended. The facts stated therein are true and correct to the best of my knowledge, information and belief.

Further Affiant sayeth not.



David C. Bergmann

Subscribed and sworn to before me this 9th day of October 2007.



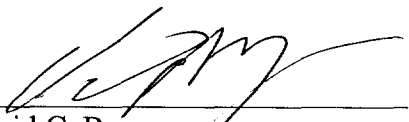
Notary Public



Bonnie Morava
Notary Public, State of Ohio
My Commission Expires 09-18-2011

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Petition for Leave to Intervene by the National Association of State Utility Consumer Advocates was provided to the persons listed below by first class U.S. Mail, postage prepaid this 9th day of October 2007.



David C. Bergmann
Assistant Consumers' Counsel

KEANAN KINTZEL
P.O. Box #8
Clearwater, FL 33757

KURTIS KINTZEL
President
Buzz Telecom Corporation
P.O. Box 11735
Merrillville, Indiana 46411

A copy was also sent by facsimile transmission to the Office of Administrative Law Judges, fax number (202) 418-0195.